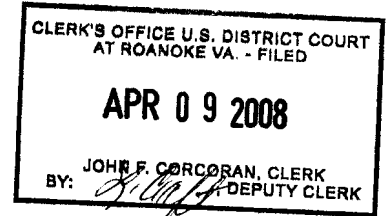


UNITED STATES DISTRICT COURT
for the

Western District of Virginia



United States of America)

v.)

Phillip Aubrey Irving)

Date of Previous Judgment: March 23, 2005
(Use Date of Last Amended Judgment if Applicable)

Case No: 7:04CR00078-001

USM No: 10780-084

Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: _____

Amended Offense Level: _____

Criminal History Category: _____

Criminal History Category: _____

Previous Guideline Range: _____ to _____ months

Amended Guideline Range: _____ to _____ months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
☐ Other (explain): _____

III. ADDITIONAL COMMENTS

The defendant received the statutory mandatory minimum sentence of 120 months as to each of his drug trafficking convictions, to run concurrently with each other. The 2007 amendments to the crack cocaine sentencing guidelines cannot reduce his guideline range below the statutory mandatory minimum. As 18 U.S.C. § 3582(c)(2) authorizes a sentence reduction only when the guidelines range has been reduced, the defendant is not eligible for a sentence reduction under the amendments.

Except as provided above, all provisions of the judgment dated 03/23/2005 shall remain in effect.

IT IS SO ORDERED.

Order Date: April 9, 2008

Judge's signature

Effective Date: _____
(if different from order date)

James C. Turk, Senior United States District Judge
Printed name and title